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February 15, 2008

VIA E-MAIL, FOLLOWED BY
VIA FACSIMILE NO. 916-341-6082 & U.S. MAIL

Michael Bledsoe, Esq.
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025

**Re: Request For Hearing
(Public Resources Code section 44307)**

Dear Mr. Bledsoe:

This Request for Hearing is hereby provided on behalf of the County of Los Angeles Local Enforcement Agency ("County LEA"), and the City of Los Angeles Local Enforcement Agency ("City LEA"). This letter constitutes a request for administrative review, under California Public Resources Code section 44307, of the California Integrated Waste Management Board's ("CIWMB") decisions or actions relating to SWIS No. 19-AA-2000; and all related issues as more particularly stated in the enclosed: "COUNTY OF LOS ANGELES' LOCAL ENFORCEMENT AGENCY'S AND CITY OF LOS ANGELES' LOCAL ENFORCEMENT AGENCY'S JOINT STATEMENT OF ISSUES".

Among other decisions, the County LEA and the City LEA request the Hearing Panel or Hearing Officer review any decision or action of or by the CIWMB to act as enforcement agency or to accept or process the application by Browning Ferris Industries of California, Inc. ("BFI"), including under SWIS No. 19-AA-2000, for any solid waste facilities permit as it may relate to BFI's Sunshine Canyon Landfills in the vicinity of Sylmar, California.

Michael Bledsoe, Esq.
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We request a date for the hearing which is acceptable to all interested parties and the Hearing Panel or Hearing Officer.

We also ask to meet and confer regarding general procedures, timing and exchange of briefs, evidence to be heard and considered at the hearing, witness lists, presentations, or other issues surrounding the conduct of the hearing. Alternatively, please refer us to any applicable rules in regard to these items. In particular, we seek a stipulation as to the applicability of any specific provision in Government Code sections 11445.10, *et. seq.*, or provisions contained elsewhere in the codes, if appropriate.

Thank you in advance for your help and cooperation on this matter. Please do not hesitate to contact the undersigned if you have any questions or wish to discuss the contents of this letter.

Very truly yours,

RAYMOND G. FORTNER, JR.
County Counsel

By 

FREDERICK W. PFAEFFLE
Principal Deputy County Counsel
Public Works Division

FWP:mh

Enclosure

c: Keith Pritsker, Esq.
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10 Attorneys for Applicants

11 **INTEGRATED WASTE MANAGEMENT BOARD**
12 **STATE OF CALIFORNIA**
13

14 *In Re: California Integrated Waste Management*
Board's Processing of Browning Ferris
15 *Industries's Application For Solid Waste*
Facilities Permit For Sunshine Canyon Landfills,
16 *Sylmar, California*

Solid Waste Information Systems (SWIS)
No. 19-AA-2000

**COUNTY OF LOS ANGELES' LOCAL
ENFORCEMENT AGENCY'S AND CITY
OF LOS ANGELES' LOCAL
ENFORCEMENT AGENCY'S JOINT
STATEMENT OF ISSUES**

California Public Resources Code
Section 43007

20
21 **I. Factual Background:**

22 Browning Ferris Industries of California, Inc. ("BFI"), is currently the operator of two
23 adjacent Class III Sanitary Refuse Disposal Facilities ("Landfills") located in the vicinity of
24 Sylmar, California. One Landfill is located within the unincorporated territory of the County of
25 Los Angeles (the "County Landfill"). The second Landfill is located within the jurisdictional
26 limits of the City of Los Angeles (the "City Landfill").

27 On April 7, 1992, the Los Angeles County Board of Supervisors designated the County of
28 Los Angeles Solid Waste Management Program, currently within the Los Angeles County

1 Department of Public Health, formerly known as the Los Angeles County Department of Health
2 Services, as the local enforcement agency for the County of Los Angeles (the "County LEA"). The
3 California Integrated Waste Management Board ("CIWMB") granted the County LEA certification
4 pursuant to California Public Resources Code Sections 43200, *et. seq.*, on July 16, 1992. Since
5 that time, the County LEA has fulfilled all of its legal requirements and remains certified and in
6 good standing.

7 Since 1996, BFI has conducted operations at the County Landfill pursuant to Solid Waste
8 Facilities Permit No. 19AA0853 (the "County SWF Permit"), which the County LEA issued with
9 the concurrence of the CIWMB.

10 In March of 1992 the City of Los Angeles City Council designated its Environmental
11 Affairs Department as the local enforcement agency for the City of Los Angeles (the "City LEA").
12 The CIWMB granted the City LEA certification pursuant to California Public Resources Code
13 Sections 43200, *et. seq.*, on August 1, 1992. Since that time, the City LEA has fulfilled all of its
14 legal requirements and remains certified and in good standing.

15 Since 2005, BFI has conducted operations within the City Landfill pursuant to Solid Waste
16 Facilities Permit No. 19-AR-0002 (the "City SWF Permit"), which the City LEA issued with the
17 concurrence of the CIWMB.

18 **II. BFI's Desire To Combine Landfills:**

19 BFI now desires to operate the County Landfill together with the City Landfill as one
20 combined refuse facility (the "Joint Landfill") in order to achieve savings based on economies of
21 scale in its operation as well as to obtain a significantly greater tonnage capacity for its disposal
22 business than is currently feasible under two separate Landfills.

23 BFI therefore applied for and is in the process of obtaining final approvals under County of
24 Los Angeles Conditional Use Permit 00-194-(5) (the "County CUP") and City of Los Angeles
25 Ordinance 172933 (the "City Zoning Amendment"), which contemplate the Joint Landfill to
26 commence operations if BFI is able to fulfill certain conditions (the "Land Use Conditions") which
27 are specified in each of the County CUP and the City Zoning Amendment.

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1 BFI desires that upon BFI's fulfillment of the Land Use Conditions, BFI be allowed to
2 conduct the Joint Landfill under one single solid waste facilities permit (the "Combined SWF
3 Permit") in lieu of the County SWF Permit and the City SWF Permit.

4 However, BFI does not want the Combined SWF Permit to be issued, regulated or
5 administered by both the County LEA and the City LEA. Rather, BFI has asked for a single LEA
6 for the Joint Landfill. In addition, the staff of the CIWMB has opined that a Combined SWF
7 Permit cannot be regulated or administered by two separate LEAs, either independently or through
8 an agreement between the two LEAs.

9 **III. Efforts To Create Combined LEA:**

10 As neither the County LEA or the City LEA feels comfortable in not participating in the
11 on-going regulation of the respective Landfill in its jurisdiction, in response to BFI's request and
12 with respect to the opinion of the staff of the CIWMB to avoid having two LEAs at the Joint
13 Landfill, the County LEA and the City LEA therefore have been working cooperatively to form a
14 joint Sunshine Canyon Landfill LEA (the "SCL-LEA") to propose to the CIWMB for certification.
15 That is, said SCL-LEA would issue and administer any Combined SWF Permit and would regulate
16 the Joint Landfill if BFI is able in the future to legally operate the Landfills as one single merged
17 operation. Following formation and certification of the SCL-LEA, the County LEA and the City
18 LEA nonetheless intend to continue to act as enforcement agencies in their jurisdictions for all
19 facilities except the Joint Landfill.

20 More particularly, the County LEA and City LEA are currently working on an agreement to
21 submit for approval by the Los Angeles County Board of Supervisors and the City of Los Angeles
22 City Council to form a separate local enforcement agency for the City and County to be able to
23 designate as the SCL-LEA and for CIWMB certification. Furthermore, since at least the Fall of
24 2007, the County LEA and the City LEA have been working together with staff of the CIWMB
25 and have devoted significant resources to prepare jointly the Enforcement Program Plan that
26 would be required for any SCL-LEA by California Public Resources Code Section 43209(e).

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1 **IV. BFI's Combined SWF Permit Application to CIWMB:**

2 However, because no certified entity yet exists with authority to act as a local enforcement
3 agency to issue a Combined SWF Permit, in January, 2008, BFI submitted an application for a
4 Combined SWF Permit directly to the CIWMB. We are told that the application for a Combined
5 SWF Permit was precipitated by BFI having obtained its conditional land use approval from the
6 County under the County CUP.

7 Consequently, the Program Director of the CIWMB, Mr. Ted N. Rauh, provided the City
8 and County with the attached January 17, 2008, correspondence explaining the rationale behind
9 the CIWMB's staff's decision to act as enforcement agency to proceed to process BFI's application
10 for a Combined SWF Permit. Mr. Rauh explains that in essence because BFI advised staff of the
11 CIWMB that BFI has obtained full land use approvals from both the City and the County for
12 "merged operations" of the Landfills, due to the lack of an enforcement agency that can issue a
13 Combined SWF Permit, the CIWMB is now forced by law to process BFI's application for a
14 Combined SWF Permit which BFI submitted directly to the CIWMB.

15 More particularly, Mr. Rauh explains in his letter that because the City and County have
16 reached an "impasse" in their attempt to designate an LEA for the merged landfill, the CIWMB is
17 now obligated to fill the resulting "enforcement agency void" in order to allow immediate
18 processing of the application for a Combined SWF Permit in favor of BFI.

19 However, as explained above, no such impasse exists between the County and City and
20 BFI has yet to obtain its full and final land use approvals that create the preceived "void".

21 Notwithstanding the foregoing, on February 6, 2008, BFI supplemented its January
22 application for a Combined SWF Permit to allow BFI to comply with the requirements of 27 CCR
23 21570. Consequently, staff of the CIWMB is expected to make a determination whether to accept
24 and commence to process the application package as complete and correct pursuant to 27 CCR
25 21650 by March 8, 2008.

26 Following the CIWMB's staff's determination and the acceptance of the application, we are
27 informed that the CIWMB's staff intends to act as the enforcement agency to commence
28 processing BFI's application under California Public Resources Code Section 44008; and

1 subsequently to submit a Combined SWF Permit for the CIWMB's concurrence under California
2 Public Resources Code Section 44009. We are also informed that CIWMB's staff intends to
3 compete the processing of said application in compliance with BFI's demand to issue the
4 Combined SWF Permit under the strict time line provided under the PRC and CCR.

5 In sum, notwithstanding BFI's inability to legally operate the Joint Landfill due to BFI's
6 failure to meet the requisite Land Use Conditions under the County CUP and the City Ordinance,
7 if CIWMB's staff deems BFI application complete, the Combined SWF Permit is expected will be
8 issued in June or July of 2008. We have also been informed by staff of the CIWMB of said staff's
9 opinion that the new Combined SWF Permit will supersede the current City SWF Permit and
10 County SWF Permit.

11 **VI. Issues that City LEA and County LEA desire for CIWMB to review**
12 **and Consider at Hearing:**

13 1. BFI's claims of land use approvals by the City and County for "merged operations"
14 do not impose a mandatory duty upon the CIWMB under PRC Section 43202 to replace the
15 County LEA as the enforcement agency within the County Landfill.

16 2. The CIWMB is legally obligated to follow the due process requirements for the
17 County LEA which are contained in the PRC, including under PRC Sections 43214, *et. seq.*,
18 before the CIWMB can prevent the County LEA from acting as the exclusive enforcement agency
19 for the County Landfill area.

20 3. In the absence of fulfilling the requirements of PRC Sections 43214, *et. seq.*, the
21 County LEA has the exclusive authority pursuant to PRC Section 43209 to act as enforcement
22 agency within its jurisdiction, including within the County Landfill area. Therefore, during the
23 time the County LEA remains certified and in good standing as a local enforcement agency, the
24 CIWMB lacks authority to act as enforcement agency within the territorial boundaries of the
25 County LEA's jurisdiction, including within the County Landfill area. The CIWMB's staff's action
26 to process an application for a permit affecting the County Landfill area, expected to commence on
27 March 8, 2008, is therefore unlawful.

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1 4. BFI's claims of land use approvals by the City and County for "merged operations"
2 do not impose a mandatory duty upon the CIWMB under PRC Section 43202 to replace the City
3 LEA as the enforcement agency within the City Landfill.

4 5. The CIWMB is legally obligated to follow the due process requirements for the
5 City LEA which are contained in the PRC, including under PRC Sections 43214, *et. seq.*, before
6 the CIWMB can prevent the City LEA from acting as the exclusive enforcement agency for the
7 City Landfill area.

8 6. In the absence of fulfilling the requirements of PRC Sections 43214, *et. seq.*, the
9 City LEA has the exclusive authority pursuant to PRC Section 43209 to act as enforcement agency
10 within its jurisdiction, including within the City Landfill area. Therefore, during the time the City
11 LEA remains certified and in good standing as a local enforcement agency, the CIWMB lacks
12 authority to act as enforcement agency within the territorial boundaries of the City LEA's
13 jurisdiction, including within the City Landfill area. The CIWMB's staff's action to process an
14 application for a permit affecting the City Landfill area, expected to commence on March 8, 2008,
15 is therefore unlawful.

16 7. The CIWMB must first obtain an agreement with the Los Angeles County Board of
17 Supervisors that is required of the CIWMB pursuant to PRC Section 43212.1 or 43310.1 before
18 the CIWMB can act as enforcement agency within the territorial boundaries of the County of Los
19 Angeles, including, more specifically within the County Landfill area.

20 8. The CIWMB must first obtain an agreement with the City of Los Angeles City
21 Council that is required of the CIWMB pursuant to PRC Section 43212.1 or 43310.1 before the
22 CIWMB can act as enforcement agency within the territorial boundaries of the City of Los
23 Angeles, including, more specifically within the City Landfill area.

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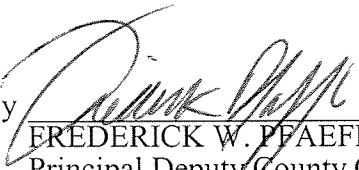
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1 9. Will the CIWMB's issuance of a Combined SWF Permit supersede or invalidate the
2 City SWF Permit and the County SWF Permit? If so, will the effect of issuing a Combined SWF
3 Permit prior to BFI's ability to meet the Land Use Conditions following the CIWMB's issuance of
4 a Combined SWF Permit not result in the immediate closure of the individual City Landfill and
5 County Landfill operations for lack of solid waste facilities permits for said individual Landfills,
6 even if BFI were to refrain from conducting operations that would violate the City Zoning
7 Amendment and County CUP land-use approvals?

8
9 DATED: February 15, 2008

Respectfully submitted,

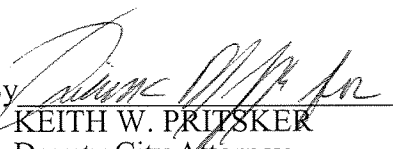
10 RAYMOND G. FORTNER, JR.
11 County Counsel

12 By 
13 FREDERICK W. PFAEFFLE
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15 Attorneys for Applicant County of
16 Los Angeles Local Enforcement Agency

17
18 DATED: February 15, 2008

ROCKARD J. DELGADILLO
19 City Attorney

20 By 
21 KEITH W. PRITSKER
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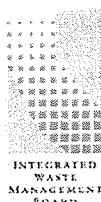
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January 17, 2007

Antonio R. Villaraigosa
Mayor
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200 N. Spring Street, Room 303
Los Angeles, CA 90012

William T. Fujioka
Chief Executive Officer
Chief Executive Office
County of Los Angeles
713 Kenneth Hahn Hall of Administration
500 West Temple Street
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Honorable Mayor and Mr. Fujioka:

This letter is to inform you and your staff of the California Integrated Waste Management Board's (CIWMB) receipt of a permit application package from Browning-Ferris Industries of California (BFI) and the CIWMB's approach to the application. The letter also contains a detailed response to many of the issues described in the October 30, 2007 letter from Beth Jines, Assistant General Manager with the City of Los Angeles Environmental Affairs Department, and the November 15, 2007 letter from Mr. Fujioka. While many of these issues were addressed by the Board at its September 7, 2007 meeting with the County and at the November 20, 2007 meeting with all parties, given the lack of consensus at this late stage we offer the following elaboration.

On January 8, 2008, CIWMB received a solid waste facilities permit application from BFI as the owner and operator of the two Sunshine Canyon landfills located in the City and in the County of Los Angeles, which proposes to change the two present permits for the two separate landfills into one permit for the combined City/County Landfill. This letter advises that the permit application was sent to the CIWMB for processing as there is currently no Solid Waste Local Enforcement Agency (LEA) that



can fully process a permit application proposing one solid waste facilities permit for a facility spanning two separate jurisdictions, and thus the CIWMB must assume the LEA responsibilities for processing the permit.

As we stated in our October 31, 2007 letter (relating to a prior application submission subsequently withdrawn), Public Resources Code Section 43310 requires that the CIWMB confer with representatives of both the City and the County with respect to the following issues:

"(a) If the board becomes the enforcement agency, on or after January 1, 1995, the local governing body and the board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency; address the powers and duties to be performed by the board as the enforcement agency, and identify an estimated workload and anticipated costs to the board. The agreement shall also identify the cost recovery procedures to be followed by the board pursuant to Section 43310."¹

I would appreciate hearing from your offices as to who will be handling the above matter on behalf of the City and the County.

The CIWMB will continue to encourage and assist your staff to take appropriate steps toward the establishment of a new LEA entity that can fully carry out the duties and responsibilities for a landfill that spans both jurisdictions. Until a new LEA is designated and certified, the Board is statutorily required to process and, as appropriate, issue the required permit. The CIWMB has previously indicated that it is willing to establish an agreement with the LEA(s) that would allow the LEA(s) to carry out permit processing duties on behalf of the CIWMB. CIWMB would retain overall control, but the specific permitting tasks could be carried out locally by the LEA(s). When a new LEA entity is designated and certified by CIWMB, the permitting process can be transferred to it. If for some reason a new LEA is not established in time, the CIWMB would need to complete the process and issue the permit. The CIWMB will then need to take on the additional permit enforcement role for the facility. Again, when a new LEA entity is designated and certified, the permit and enforcement responsibilities for the landfill will be fully transferred from the CIWMB.

Relative to the CIWMB perspective on many of the issues raised by Ms. Jines in her October 30, 2007 letter and in the November 15, 2007 letter from Mr. Fujioka, we have the following comments.

Land Use Entitlements

Both letters assert that certain land use conditions (particularly Qualified Conditions of Approval B(d)(1), B(d)(2) and B(d)(2)(aa) [the "Q Conditions"] imposed in connection with the City Council's approval of the rezoning of the City Landfill) require that the City-only Landfill operate at least five years before the portion of the

¹ We note however, that an agreement need not be executed before the Board is obliged to assume LEA duties. Instead the statute explicitly calls for the Board to seek such an agreement "[i]f the Board becomes the enforcement agency" as required to fill the void, to assure that locally approved landfills are at all times properly regulated under the IWMA.

landfill within the jurisdiction of the City may operate as part of the combined City/County Landfill. Since that five-year period has not yet run, you believe that BFI is not entitled to operate the combined City/County Landfill.

First, let me assure you that it is not CIWMB's intent, nor have we the authority, to interpret and enforce locally-imposed land use conditions. As with all solid waste facilities, the solid waste facility permit is separate and independent from local land use restrictions and entitlements. (See, Public Resources Code §§ 40059(a) – Notwithstanding the Integrated Waste Management Act, cities and counties "may determine...(1) Aspects of solid waste handling which are of local concern, including...[the] nature, location, and extent of providing solid waste handling services." See also, Public Resources Code § 43021 – CIWMB shall develop "standards for the design, operation, maintenance and ultimate reuse of solid waste facilities, but shall not include aspects of solid waste handling or disposal which are solely of local concern.") It is clear that the owner and operator of the Sunshine Canyon landfills must comply with the separate local requirements of the City of Los Angeles and the County of Los Angeles, now and after a new solid waste facilities permit is issued. It is up to the City and County to determine BFI's compliance with local requirements, including whether BFI has the right, under local land use conditions, to operate the combined City/County Landfill upon issuance of a solid waste facilities permit for the Landfill.

The fact that the City and County make their own land use decisions, however, does not mean that an LEA having jurisdiction over the entire facility may not accept an application for, and issue, a solid waste facilities permit for the facility. From the perspective of CIWMB and the LEA, a solid waste facilities permit is wholly independent from local land use entitlements. A solid waste facilities permit is a permit to operate and is but one of a number of permits that an operator must obtain before it commences operation of a solid waste facility. Other typically necessary permits include land use entitlements, waste discharge requirements, and air pollution control district permits. It has long been CIWMB's view that LEAs may not take local land use entitlements into consideration when evaluating permit applications except to the extent they help the LEA better understand the proposed solid waste handling activities and more appropriately condition the solid waste facilities permit. In recent regulations, CIWMB deleted its requirement that operators submit copies of the use permits (if any) with their applications for solid waste facilities permits because some LEAs believed that requirement gave the LEA the authority to determine if the operator had the right, under local planning laws, to operate the proposed facility. That is a determination to be made by the local government, not by the LEA. (See Title 27, California Code of Regulations, § 21570(f), effective April 13, 2007.) CIWMB regulations now provide that an applicant must deliver a copy of its solid waste facilities permit application to the local planning department so that the planners can determine whether any further land use entitlements are necessary in the event the LEA issues the solid waste facilities permit. (See 27 CCR § 21570(a).)

It is this latter point – the independence of the solid waste facilities permit from the local land use entitlements – that is at the core of your contentions that BFI may not apply for or receive a solid waste facilities permit because the Q Conditions would prevent the operation of the combined City/County Landfill. We

agree that the City and County determine BFI's right to develop and operate the combined City/County Landfill under local land use laws. Whether or not BFI has the land use entitlements to operate the combined City/County Landfill does not preclude the LEA from receiving an application for, and issuing to BFI, a permit to operate the combined City/County Landfill. As with any other permit, however, BFI cannot operate the facility until it has all of the necessary approvals from all public agencies having jurisdiction, including land use entitlements from the City and the County, a solid waste facilities permit and all other permits.

I believe this resolves the land use concerns you raise in your letters.

The Board Act As The Enforcement Agency Of Last Resort

The Board's concerns regarding the lack of an enforcement agency able to process a permit application from the operator date back to the Spring of last year. At that time the operator advised that since it has now obtained a CUP from the County for merged operations, it was now in the process of preparing a solid waste facilities permit application for submission to the appropriate enforcement agency. This led to our June 26, 2007 letter to the City and County, advising that "the board can assume responsibility for processing the permit for the combined facility." The letter further placed the City and County on notice that the "Board would take this action if a joint LEA agreement is not formed by the City and County, or the agreement has not completed the Board's certification process and the facility applies for a combined facility permit."

Over the last half-year the Board has consistently maintained that the Waste Management Act calls for the Board to act as the enforcement agency of last resort where, among other cases, a governing body has failed to designate an

LEA. Specifically, Public Resources Code Section 43202 imposes a mandatory duty upon the Board to assume such a role: "If an enforcement agency is not designated and certified, the board, in addition to its other powers and duties, shall be the enforcement agency within the jurisdiction...."

While the specific circumstances here are unusual in that the City and County each have LEAs designated and approved within their jurisdictions, there appears to be no dispute that the required designation has yet to be made for the merged landfill, which spans both jurisdictions. Indeed, the draft Memorandum of Understanding between the City and County provided to the Board on December 10, 2007 acknowledges that "no other certified or approved entity currently exists which has the requisite authority under the Act or is otherwise approved to represent or act on behalf of either the City LEA and County LEA, individually or jointly, as a local enforcement agency for permitting the Joint Operation." (p. 2. of Memo)²

² This is further demonstrated by the inability of the jurisdictions to fulfill the designation process set forth in the Regulations without creating a new LEA: (a) When the City and County first designated its respective local agencies, their Notices of Designation included "an enumeration of every solid waste facility ... in the jurisdiction including permitted ... facilities." (14 CCR 18051(h).); (b) Moreover, when the City and County submitted their respective EPPs, their plans included "a comprehensive list of all types of solid waste facilities... within the jurisdiction." (14 CCR 18077(a) (6).); (c) Thus in approving the City's Notice of Designation and EPP, the Board approved its jurisdiction over the City's "Sunshine Canyon" landfill, and in approving the County's Notice of Designation and EPP, the Board approved its jurisdiction over the County's "Sunshine Canyon" landfill (which

While there appears to be no dispute that the required enforcement agency designation has yet to be made by the City and County for the merged landfill, the Board's obligation to fill the "enforcement agency void" for permit application processing has been called into question. The City and County contend that since each have made designations for their respective jurisdictions, the statutory mandate has been fulfilled and thus the Board should not step in as the enforcement agency. Moreover, the City and County contend that the enforcement agency impasse created by the failure to date of the two governing bodies to designate an LEA for the merged landfill can theoretically extend into perpetuity, effectively precluding the landfill from ever merging unless and until the impasse is broken.

The above position of the City and County is contrary to statutory intent. Clearly governing bodies play integral roles in the formation of landfills within their jurisdictions through, among other means, their conditional use permit process.

However, once an operator has gone through all of the hurdles of obtaining local jurisdictional consent for formation, State law assures that there is a mechanism for putting an agency in place to enforce the permit, to assure that any potential void presented by the lack of a local designation does not arise.

Here the issue at hand was not formally raised by the operator until it had obtained the required consent for formation from both the City and subsequently the County in early 2007. Indeed, given the many years the operator has pursued authority from the local jurisdictions to form the merged landfill, it is unfortunate that time was not concurrently utilized to form the new LEA for the bi-jurisdictional landfill. Nevertheless, now that the operator has obtained such local permission, we do not concur that it can be precluded from actually forming the merged landfill solely on the basis that the two jurisdictions are apparently having difficulty coming to terms on the LEA designation process. This "enforcement agency void" is precisely what the Board is obliged to fill unless and until a local designation is made and approved by the Board.

Based on the foregoing, the Board has fulfilled its obligation to step in as the enforcement agency during the brief period the operator had pending a submitted permit application, and stands ready to meet its obligations yet again should the operator reapply before a local LEA is designated and approved. As always, the Board is prepared to enter into an agreement with the City and County in accordance with PRC Section 43310.1 as offered by the Board in its October 31, 2007 letter. We note however, that an agreement need not be executed before the Board is obliged to assume LEA duties. Instead the statute explicitly calls for the Board to seek such an agreement "[i]f the Board becomes the enforcement agency" as required to fill the void, to assure that locally approved landfills are at all times properly regulated under the IWMA.

each have separate SWIS numbers); and (d) With respect to the proposed merged landfill, upon the Boards approval of the new permit the City and County will be required to amend their EPPs to reflect the elimination of the current City and County landfills from their respective EPPs. Finally, the City and County will further be required to submit a new notice of designation and EPP for a new jurisdiction for the merged landfill. (See, e.g., 14 CCR 18081(e)(4): "The components of the EPP shall be reviewed and amended by the LEA...to reflect any changes. The amended components shall be submitted to the board for approval.").

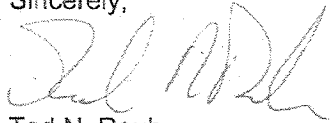
Sole LEA vs. Two LEAs Apportioning Duties Issue

As you are aware, the Board had earlier been concerned over the apparent intent to form the new LEA in a manner which is not consistent with regulatory intent, in that it essentially apportioned the new LEA duties and responsibilities between the existing County and City LEAs, rather than creating a new sole, independent and separate LEA. We are pleased that the Draft MOU now references the formation of a sole, separate, independent LEA, consistent with regulatory intent.

We hope this notice and explanation of our perspective on the issues is of assistance to you. By separate letter to the City and County LEAs we have suggested avenues to maximize your participation in the processing of the combined permit. The CIWMB staff will provide LEA staff with up dates and notices regarding the permit process and will seek their input at every opportunity.

Please contact me at 916-341-6502 or at trauh@ciwmb.ca.gov if you have questions for concerns. Thank you.

Sincerely,



Ted N. Rauh
Program Director
Waste Compliance and Mitigation Program

Cc: LA City LEA
LA County LEA